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Lost in space? The role of place in the delivery of social welfare law advice over the telephone and face-to-face

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Abstract

Advice that is provided exclusively over the telephone has been promoted by government as more convenient and accessible than face-to-face appointments. The resulting push towards telephone-only provision, as implemented by the Legal Aid, Sentencing and Punishment of Offenders Act 2012, challenges the long history of association between social welfare law advice and local delivery within disadvantaged communities. This article reports on qualitative research comparing telephone and face-to-face advice which uncovers the continuing relevance of place in the dynamics and mechanics of social welfare law provision. Familiarity with the geographical location, knowledge of local policies and procedures, relationships with opponents and allies, and an understanding of the 'local legal culture' mean that face-to-face advisers are often able to conduct their legal casework more effectively. Conversely, local knowledge is unlikely to be available to Community Legal Advice telephone advisers. This research suggests that, in addition, telephone-only advisers may be developing a more narrow understanding of the essential qualities of casework. These findings are particularly significant in view of the likely future expansion of remote methods of delivery in legal aid work.

Key words: Place; local; telephone advice; access to justice; legal aid; Law Centres; housing cases; methods of delivery.

Introduction

Telephone-only advice through the Community Legal Advice (CLA) service was a key element of the costs-saving programme introduced in April 2013 through the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO).¹ The increasing movement of legal aid provision to telephone-only services is part of a wider governmental drive towards technology-based public service delivery.² As with the online court (Briggs, 2016), this is often related to digital technology, but includes telephone-based services.³ The measures implemented as a result of LASPO were explained by the Coalition government as creating a legal aid system that is more accessible and ‘acknowledges changes in the structures of our lives’ (Ministry of Justice (MOJ), 2010: 82). Within this context, local advice agencies and solicitors’ offices have been characterised as obsolete and increasingly irrelevant to legal aid provision.

Nevertheless, the reduction of physical and social distance between lawyers and disadvantaged clients continues to be a focus for Law Centres, where responsiveness to local needs remains fundamental to their operating philosophy and day-to-day practice (Mayo et al., 2014). Locally-based lawyers and advisers are also able to develop an understanding of the shared ‘local legal culture’ in relation to their casework (Kritzer and Zemans, 1993: 538-40). These factors indicate that, in social welfare law, advice provided at a local level will continue to have a value, despite the technological changes taking place.

The purpose of this paper is to explore whether and how aspects of place and local specificity will remain relevant to the delivery of social welfare law services. The initial discussion focuses on different definitions of ‘place’ and the power and social structures that they disguise. The relationship between power and place is then examined in relation to the actions taken in the early 1970s to establish Law Centres in deprived areas, in order to provide expert legal advice to communities that had previously been neglected by private practice solicitors (Smith, 1997). Next, the article briefly outlines current academic knowledge in this area. There is then a brief explanation of the methodology and research methods used in this project, before going on to discuss the research findings. The article considers different forms of accessibility and the multi-faceted nature of ‘local knowledge’, which encompasses physical, procedural and relational aspects. Finally, this work examines whether divergent understandings of the essential requirements of the adviser’s role are emerging as a result of the differing experiences of advisers working in face-to-face or telephone-only environments.

Defining ‘place’

This article is concerned with the role of ‘place’ in the delivery of social welfare legal aid services. There are many meanings that may be ascribed to ‘place’. In common usage, ‘place’ refers to a location with a material, visual form (Cresswell, 2004). Massey (1994: 154), however, proposes an

¹ Under LASPO, telephone-only advice became mandatory in education, discrimination and debt. The Post-Implementation Review (PIR) of LASPO reports a reduction of £60m in legal aid expenditure between 2012-13 and 2017-18 in the areas of housing, debt, welfare benefits and employment (MOJ, 2019).

² See, for example, the Government Transformation Strategy (Cabinet Office and Government Digital Service, 2017).

³ In 2014, for instance, HMRC closed all of its 281 local face-to-face enquiry centres to be replaced by a telephone service (which it was said could arrange home visits in appropriate cases) (HMRC, 2013).

alternative version of place, which focuses on social connections and is 'constructed out of a particular constellation of social relations meeting and weaving together at a particular locus'.

Often presented as a backdrop to events, place is not a neutral phenomenon. The practices and processes associated with particular places have the power to alienate or to include (Cresswell, 2004). It is argued that the configuration of place has an impact on political and societal relations. Massey and McDowell (1994:233) explain how women being confined socially 'to the 'private' sphere of the suburbs and the home' in the mid-nineteenth century led to their exclusion from the means of power and control in their society. Blomley (2003) also sees the designation of space as a form of political and social control. Delaney (1993) analyses the role of judicial interpretations of racially restrictive covenants in enforcing racial segregation in the US. Calmore (1999: 1930) recognises that, for the inner-city poor different sites of oppression, such as race and class, may intersect to produce a situation of 'concentrated poverty'. In the context of the provision of social welfare law advice, it is important to consider the consequences of changing the site of delivery of legal services because it determines the ability of impoverished citizens to challenge the social welfare decisions that affect their lives.

Place and social welfare law

The transformative role of place in the provision of social welfare law advice is evident from the changes to social welfare law practice brought about by the early Law Centres in the 1970s. By this time, it was apparent that private practice solicitors were seriously failing social welfare law clients. Legal aid was available for social welfare law matters, but take-up was low (Zander, 1968; Smith, 1997). Private practice solicitors were unwilling to establish offices in disadvantaged neighbourhoods because of the professional, social and financial advantages of being situated in more prosperous areas (Zander, 1978; Goriely, 1996). Larson's (1977: xvi-xvii) concept of the 'professional project' describes the process through which occupational groups possessing special knowledge obtain a privileged position in society, which they then exploit for financial and social gain. From this perspective, it could be argued that the professional project of solicitors demanded that they served affluent clients and were based in areas that were in keeping with the image of 'repute and respectability' they wished to portray to the governing elite (Macdonald, 1995: 30-31). This resulted in a situation where, despite the theoretical availability of legal aid for social welfare law problems, in reality, few clients received its assistance (Smith, 1997).

Place, in the form of targeted local delivery, was central to the solution that Law Centres presented to the problem of unmet need for legal assistance in social welfare law matters. Frustrated by the failure of private practice to assist social welfare clients, and encouraged by the successes of the 'neighbourhood law firms' set up as part of the War on Poverty in the US, legal activists in the UK began to establish neighbourhood Law Centres staffed by qualified lawyers. Their intention was to address the problems of poverty by providing expert legal advice on social welfare law matters *within* disadvantaged areas (Zander, 1978; Smith, 1992).

Subverting the professional norm, the Law Centre philosophy was centred on creating close social and physical proximity to its client group. Law Centres embedded themselves in the community through the type of work they did, which was often determined by the acute problems afflicting inhabitants of the local area (Mayo et al., 2014). Moreover, in addition to their office-based

activities, and in a reversal of the norm of the client attending on the solicitor, Law Centres and advice centres provided innovative duty schemes at courts (Campbell, 1992) and in the police station, as well as outreach services at community premises such as libraries and community centres. It can also be argued that there was a symbolic value to the Law Centre. Its physical positioning within a deprived area made local people feel that their problems were deserving of legal intervention and hence affected their 'legal consciousness' (Sarat, 1990: 343). Law Centres worked with and within local communities. In this way, the site of delivery was critical to bringing about legal and social change.

Marxist scholars and critical legal theorists have consistently expressed scepticism about the motives and effectiveness of lawyers working for the poor. Poverty lawyers are considered to be equally motivated by the professional project as their more commercial counterparts and, moreover, to be perpetuating, rather than challenging, the unequal power structures within society. They are criticised for subordinating their clients and replacing the client narrative with their own (see, for example, Bankowski and Mungham, 1976; Hosticka, 1979; Alfieri, 1991; White, 1990). Nevertheless, despite these ideological objections to poverty law practice, opening Law Centres in disadvantaged areas had the practical benefit of increasing the numbers receiving legal aid for social welfare law problems. This meant, for example, that private sector tenants, who had strong security of tenure due to Rent Act protection, were being routinely represented against landlords for the first time. In addition, following fire fatalities in their local areas, campaigns led by North Kensington Law Centre and Camden Law Centre contributed to the introduction of fire safety regulations in houses of multiple occupation (HMOs) (Campbell, 1992).

In 1979 the Royal Commission on Legal Services recognised that Law Centres had made a substantial contribution to expanding legal services for the poor and addressing unmet need for legal services (Smith, 1997; Stephens, 1993). It is submitted that, by disrupting the traditional sites of legal service delivery, Law Centres were able for a time to disturb the usual patterns of power relations between subordinated and dominant groups in society. The current shift from local to remote delivery represents the most recent phase in the relationship between place and social welfare law and, in view of the considerable influence that the site of delivery has exerted in the past, it is a change that demands our attention.

About this study

The findings of this research highlight the powerful, and sometimes unexpected, manifestations of the dynamics of place and embedded local knowledge in the seeking and giving of advice. Currently there is little other academic literature which explicitly focuses on the significance of place in relation to social welfare law advice in England and Wales. Recent statistical analysis of Legal Services Commission (LSC) data comparing telephone-only and face-to-face education law advice shows that the further away a client is from their nearest provider the more likely they are to use telephone advice (Patel, Balmer & Smith, 2014). The same research also found that telephone advice is less likely to provide a tangible outcome for the client, largely because of a greater propensity for face-to-face cases to be taken further by the adviser. The lower level of tangible outcomes in education telephone advice matters is consistent with the findings of other quantitative studies in the areas of housing, debt and family law (Balmer et al., 2012; Patel & Smith, 2013a; Smith et al., 2013). This suggests the possibility that the local element of face-to-face advice contributes

towards the more effective nature of this type of provision. Investigating this matter further calls for in-depth qualitative research into the experiences, perceptions and attitudes of social welfare clients, lawyers and advisers engaged in telephone and face-to-face advice.

The sampling frame for this research was based on clients and advice providers in matters of housing law. The potential research population for this project was very extensive. It included all social welfare law clients in England and Wales receiving 'legal help' (advice and assistance) under legal aid over the telephone or face-to-face and their lawyers and advisers.⁴ In order to target resources at the areas where the differences between telephone and face-to-face advice were likely to be most evident, purposive sampling was used (Charmaz, 2006; Flick, 2009). Housing and homelessness advice is an area of social welfare law where both telephone and face-to-face legal aid funding remain available. This also led to a focus on the experiences of more vulnerable clients.⁵ Legal needs surveys have shown that young people and people with mental health issues are more likely to report problems with housing than other groups (Pleasence et al., 2010; Balmer, 2013). In addition, these are client groups that have been identified as more likely to find using telephone-only services problematic (Mind & Rethink, 2011; Disability Charities Consortium, 2011; Kenrick, 2009). Thus, it was probable that research with housing advisers and clients would provide useful insights into any disparity between telephone and face-to-face service-delivery.

A qualitative approach was adopted for this research. Semi-structured interviews were used in order to explore more fully the perceptions and experiences of the research participants from their own perspective. Combined with observations, these methods provided a detailed understanding of how the day-to-day dealings between lawyers, advisers and clients are affected by aspects of place in both its physical and relational dimensions.

Most of the interviews and observations in this study took place with the clients, advisers and lawyers of a nationwide not-for-profit (NFP) organisation giving legal aid funded housing law advice face-to-face and as part of the CLA telephone advice service. Research took place in four local offices (2 in London and 2 outside London) and a CLA office based outside London. Between January and September 2014, I observed or listened in on 22 lawyer/adviser-client interviews (11 telephone and 11 face-to-face) and conducted 40 research interviews, 20 with lawyers/advisers (10 telephone and 10 face-to-face) and 20 with clients (7 telephone and 13 face-to-face).⁶ All the interviews and observations were recorded or noted in detail. All the recordings and manuscript notes were then transcribed in full.

⁴ In 2013-2014, there were 52,981 legal help cases in the areas of discrimination, education, housing, debt and welfare benefits. In addition there were 11 telephone providers and 677 providers with face-to-face contracts in these categories (Legal Aid Agency (LAA), 2014).

⁵ For the purposes of this paper, vulnerability refers to physical, mental or social characteristics which make it more difficult for individuals to manage their day-to-day affairs and which mean that they find it harder to cope when faced with problems.

⁶ Five lawyers and 18 advisers participated in this research, so in the analysis of the data, the term 'adviser' is used generically to describe the legal personnel in this study. Please note, however, the key to direct quotes from interviewees: 'FA' denotes a face-to-face adviser, 'FL' is a face-to-face lawyer (i.e. legally qualified), 'TA' is a telephone adviser, 'FC' is a face-to-face client and 'TC' is a telephone client.

Carrying out research within a dynamic working environment affected the availability of lawyers and advisers willing and able to participate in the research. In addition, there were particular problems with recruiting telephone clients to the research.⁷ Clients involved in telephone observations rarely kept to agreed arrangements for follow-up interviews or further contact. The problematic personal circumstances of these clients are likely to have reduced their capacity or willingness to be involved in the research (Pleasence & Balmer, 2007). In contrast, it was often possible to interview face-to-face clients immediately after observations of their interviews with the lawyer/adviser. The practical issues encountered with regard to recruitment and participation meant that it was not possible to interview all the clients and advisers observed or observe all the advisers and clients interviewed.

Data collection and analysis of the data were carried out using grounded theory method. 'Grounded theory' was adopted as a research strategy because of its requirement that theory emerges from the data, rather than being arrived at by testing a preconceived hypothesis. This gives it a 'real world' focus (Glaser & Strauss, 1967: 2-3; Strauss & Corbin, 1998: 12-13). By employing grounded theory, I was able to produce a complex account of how place features in the advice experience of telephone and face-to-face social welfare clients, their advisers and lawyers.

The role of place in advice

In keeping with Massey's broader definition of place, the meanings of place that emerged in this research stretched beyond the purely physical. As well as the tangible notions of access and geographical knowledge, place also encompassed knowledge of local policies, practices and procedures, interpersonal relationships, shared cultures, organisational networks and court-based representation.

Before going further, it is important to acknowledge that a number of the place-related qualities found in face-to-face advice and considered absent from telephone advice are not inherent to either method of service-delivery. It is not inevitable, for instance, that a face-to-face agency will be familiar with the local authority's personnel or policies. Equally, it is not impossible for remote services to develop local knowledge with the resources and commitment to do so (Giddings & Hook, 2002). However, CLA currently provides a telephone service to clients across the country on a randomised basis, which makes local knowledge more difficult to acquire and retain. Thus the way that it operates in practice means that there are differences with regard to local knowledge. It is this day-to-day reality that this article strives to explore through the experiences of clients, advisers and lawyers.

Access

Increased accessibility and greater convenience are frequently cited as benefits of telephone advice (Patel & Smith, 2013b; Legal Services Commission, 2004, MOJ, 2010). It was stated by the government that telephone-only advice would allow clients to obtain advice 'at a time and place convenient to them', 'without needing to travel or wait for an appointment', and 'over extended hours' (MOJ, 2010: 82). Access in this form, which is about the ease of reaching a service and obtaining an appointment, has been categorised as 'logistical accessibility' (Buck et al., 2010). In common with the government, telephone advisers valued telephone-only advice for its 'logistical

⁷ My PhD thesis includes a full discussion of these issues (Burton, 2015).

accessibility'. They felt that clients would find it more convenient to pick up a telephone rather than having to wait for an appointment in a solicitor's office or Citizens Advice Bureau (CAB). They also saw their extended opening hours as a positive aspect of telephone-only advice. A previous study has identified daytime-only opening hours as a potential barrier to access to advice (Buck et al., 2010). In this study, several telephone clients were grateful that they had been able to get advice over the telephone without delay, particularly where they had found it difficult to get advice from the local CAB.

Problems with access to CABx have been documented in the past (see, for example, Moorhead et al., 2001; Moorhead & Robinson, 2006). Moreover, cuts to legal aid and other funding mean that the capacity of face-to-face services, such as CABx, to respond to demand is significantly reduced (Low Commission, 2015). Intake arrangements varied among the face-to-face services observed in this research (including referral-only structures) and in some instances these arrangements did seem to restrict the ability of the service to respond to emergency matters. On this basis, it appears that currently telephone services can usually offer more immediate access than face-to-face provision.

It should, however, be noted that telephone advisers' comments regarding the instant availability of their service were made in the context of a service that was significantly undersubscribed. In 2013–14, the CLA telephone service was underused (Low Commission, 2015; Patel and Mottram, 2014). This contrasts with the non-legal aid telephone helpline services provided by Shelter and Citizens Advice which struggle to meet demand and cannot answer the majority of calls that they receive (Low Commission, 2014). It seems likely that, if demand for the CLA service rose to levels similar to those of these other non-legal aid telephone advice services, its immediate accessibility might be compromised.

Furthermore, the lack of publicity and limited public awareness of the CLA (Patel and Mottram, 2014) show that unless a telephone service is properly publicised, it is difficult to substantiate claims of greater accessibility. This has been a consistent cause for criticism of the CLA service (Justice Committee, 2015). Recent statistics show falling take-up levels in relation to Debt for the CLA Telephone Gateway: In 2013-14 there were 42,911 calls and 2,398 referrals to CLA specialists. In 2016-17, there were 19,699 calls and 646 referrals (HC Deb 17 November 2017 cW). If, as the poor call numbers indicate, support services and the public are largely unaware of an advice service, assertions of improving access are largely theoretical.

Local referral networks among voluntary sector agencies were also seen by face-to-face advisers as significant in terms of ensuring that clients reached their advice service. The importance of local referral networks is illustrated by the fact that very few of the clients that I interviewed had come directly to the advice service. The first port of call for most of these clients was the local CAB. At this point, face-to-face clients were usually referred to the local housing advice service. Often these clients were aware of the existence of the agency, but not of the advice that it provided. It was rarer, however, for CABx to refer telephone clients directly to the CLA service. Telephone clients' routes to the CLA service seemed more haphazard. The actions of CABx tend to confirm the low level of awareness of the CLA service among potential referral agencies found by recent MOJ research (Patel and Mottram, 2014). Clearly, this is a significant issue with regard to access to the CLA.

Face-to-face advisers felt that local services promoted access to social welfare advice for clients who found it difficult to manage their affairs. A face-to-face adviser described how less articulate clients struggled to communicate their problems and would often find it easier to seek help if they could simply come and show someone their documents: ‘...[T]he person at the door can always show someone an eviction letter. But if you’re ringing up an adviser on the phone, you’ve got to actually know what an eviction letter is’ (FA3).

As explained above, the government’s focus in relation to the legal aid reforms was on logistical accessibility. However, in their work, Buck et al. (2010: 32) conceptualised accessibility in much broader terms and considered logistical accessibility as only one aspect of accessibility. They also examined the ‘intellectual accessibility’ and ‘emotional accessibility’ of advice services. With regard to intellectual accessibility, they refer to the ability of vulnerable clients (such as those with learning and language difficulties and/or with complex physical and mental health needs) to use the service (Buck et al., 2010). In this research, a former Law Centre worker confirmed that open access legal services were important because, in her experience, clients would come into the Law Centre with problems involving complex legal issues, which they would never have categorised as legal. They would not therefore have sought advice from a private solicitor’s firm. As she commented: “...[I]t’s not a legal problem, is it? It’s a problem with a – possibly a legal solution’ (FL4). This view is supported by research which has shown that individuals will still seek help from the advice sector whether or not they characterise a justiciable problem as legal (Pleasence & Balmer, 2014). In order to enforce rights, an individual first has to realise that they have them (Buck, Pleasence & Balmer, 2008). Providing a community-based point of access can help clients who do not see their difficulties in legal terms to find the legal assistance they need to address their problems.

Buck et al. (2010) defined ‘emotional accessibility’ as the ability of a service to create a welcoming environment where clients feel comfortable when explaining their problems. In this research, in the face-to-face setting, emotional accessibility took on a number of facets. A face-to-face adviser referred to the importance of a ‘brilliant receptionist’ and a welcoming reception area (FA4). Other face-to-face advisers recognised the significance of the welcoming rituals of the face-to-face interview, or the ‘meet and greet’, in enabling the client to feel relaxed and to see that they were being taken seriously by the adviser. Thus they recognised the importance of emotional as well as logistical accessibility. Telephone advisers were not in a position to employ the same welcoming rituals and they did not raise this as a potential issue when interviewed. In observations of telephone interviews, preliminary discussions with the client were minimal. This suggests that face-to-face advisers were more alert to notions of intellectual and emotional accessibility. The difference in approach and understanding between telephone and face-to-face advisers is an issue that will be returned to later on in this paper.

A potential limitation of local provision is that, in close-knit communities, clients may be reluctant to seek advice in relation to issues such as domestic violence or abuse, due to concerns about their confidentiality being compromised (Mayo et al., 2014) or about the independence of local lawyers and the police (Giddings and Hook, 2002). In addition, clients may not want to risk being seen going into a local advice agency. A telephone adviser referred, for example, to a domestic violence client who she felt was only willing to contact her because it was a telephone service. Thus, the

opportunity to contact remote services may be attractive to clients unable to leave their own community and unwilling to access advice within it.

A further possible difficulty is that there may be a limited choice of local providers (see also Giddings and Hook, 2002). In this research, a dissatisfied face-to-face client continued to use the local service (although there were a few other providers in the area). If clients are unhappy with their adviser, they may have few options in terms of obtaining help elsewhere locally. Remote services provide them with another route to advice in such circumstances.

There are therefore arguments for retaining some element of telephone provision in any social welfare legal aid service. Within a properly functioning legal aid system, telephone advice has the potential to provide an immediate point of access to clients. The client could then be advised and/or referred, as appropriate to their needs and circumstances. The difficulty comes when telephone-only advice becomes the sole or predominant method of clients receiving social welfare law services. The government may now have pledged to remove the mandatory element of telephone-only advice in debt, discrimination and education law by 2020 (MOJ, 2019), but, as ongoing concerns about ‘advice deserts’ attest,⁸ the funding cuts to legal aid and local advice services mean that face-to-face services are unlikely to be financially sustainable in the long term in any event. Telephone-only services may be the only option in some areas and the findings of this research suggest that more vulnerable clients are likely to find it more difficult to access advice if it is provided only by telephone-based services.

‘Local knowledge’: different interpretations

As defined by interviewees, ‘local knowledge’ took on a wide variety of meanings for advisers in this study. Some referred to knowledge of the physical locality. Others saw it in terms of familiarity with local practices and procedures and also relationships with allies and opponents. It was notable that whatever their conception of ‘local knowledge’, both telephone and face-to-face advisers were able to recognise that it could improve the quality of the service given to clients.

Geographical knowledge

Beginning with a traditional understanding of place, knowledge of the physical locality was raised by face-to-face advisers as a valuable aspect of being based locally. A face-to-face adviser referred to the usefulness of knowing the housing conditions that prevailed in the area: ‘...[I]f [clients] say they live in a particular block, and there’s problems with something or other, I’ll think, “Ah, yeah, that sounds about right”’ (FL3). He also saw familiarity with the shorthand terms for local services as a helpful tool in his casework: ‘[Clients] won’t understand what a CMHT [Community Mental Health Team] is...but you can just say to them...‘[D]o you ever go to [X] Road?’ and I know [X] Road is the local CMHT...’ (FL3). This enabled the adviser to understand the nature and level of the client’s mental health difficulties and the options available to him (the adviser) in terms of resolving the client’s housing problems. In housing cases particularly, the physical reality of the client’s circumstances will often be relevant to the issues in dispute. Lack of geographical knowledge can

⁸ New research by the Law Society (2019) has, for example, revealed that over half of all local authorities in England and Wales have no provision for housing legal aid services, leaving 37% of the population living in local authorities without a housing legal aid provider.

affect both telephone advisers and face-to-face advisers without a local connection. Accordingly, the advantages of direct knowledge of the physical locality in the conduct of housing casework accrue particularly to face-to-face services with a local remit.

Knowledge of local policies and procedures

In a move away from more tangible notions of place, another important aspect of local knowledge is familiarity with the policies and procedures of local authorities. Face-to-face advisers believed this enabled them to advise clients more effectively from the outset of a case. They could guide clients through the process they were about to experience and also in relation to possible strategic avenues to take. In contrast, telephone advisers rarely had a chance to build up expertise regarding the policies and procedures of any specific local authority. A telephone adviser explained that: ‘...[E]ach council has a different procedure, so we have to sort of look up each procedure or find out each procedure, so it just takes that bit longer for us as well’ (TA6). As before, these issues can also affect face-to-face services with no particular local connection.

Place, relationships and casework

Face-to-face advisers were more likely to see human relationships as providing the most significant advantages of having a local connection. Links with allies were viewed as beneficial because of the potential to provide clients with additional legal and non-legal support. Particular importance was accorded to relationships with adversaries, which were considered to contribute towards better legal outcomes for clients. Thus, place was interpreted more as the point of social intersection that Massey (1994) describes.

Local networks and relationships with allies

Social welfare clients often require more assistance than one agency alone can provide. Research has shown the multi-dimensional nature of the problems faced by clients who experience problems in ‘clusters’ (see, for example, Genn, 1999: 31-36; Pleasence et al., 2004: 45-48; Pleasence, 2006: 65; Pleasence et al., 2010: 40). A ‘homelessness cluster’ has been identified, for example, incorporating problems with rented housing and homelessness and showing strong links to benefit problems. Further, clusters of problems are not distributed evenly across the population. Ill and disabled people are more likely than others to report ‘homelessness cluster’ problems (Pleasence, 2006: 70, 73). Other research has shown that a significant minority (43 per cent) of clients seek advice with more than one legal issue and many clients’ problems are further compounded by vulnerability due to physical or mental ill health (Moorhead & Robinson, 2006).

Face-to-face advisers saw relationships with ‘allies’, such as other local advice agencies and voluntary sector support organisations as providing opportunities to connect clients with services that were not available from their advice organisation. These services ranged from other forms of advice provision, such as welfare benefits and debt advice, to social support and practical assistance. It was also suggested by face-to-face advisers that connections with other support services and local agencies could produce better longer-term outcomes for the client by improving their ability to cope with their personal circumstances. It was generally accepted by telephone advisers that access to additional support was an area where telephone-based advice was less able to assist clients than local face-to-face services.

Working relationships with opponents

In the most immediate sense, relationships with the 'other side' often enabled face-to-face advisers and lawyers to circumvent the barriers posed by local bureaucracy. They could bypass the switchboard at the local authority in question and speak directly to the relevant person. For telephone advisers, this kind of direct contact was much more difficult. A number of the telephone advisers referred to the time it could take them simply to make contact with the relevant local authority official in the initial stages of the case. A telephone adviser explained that she could 'spend a whole morning' and get 'passed from pillar to post' trying to find the person she needed to speak to at the local authority (TA4). The dislocation being felt by the telephone advisers echoes the experiences of clients when confronted with the automated processes now in operation at many local authorities. Due to their previous contact with the other side, it was often an experience that face-to-face advisers could avoid.

The ability to negotiate and to do so effectively is essential for any adviser. The adversarial legal systems of the US and UK are characterized by negotiation and settlement (Sarat & Felstiner, 1986; Galanter, 1984; 2006; Genn, 1987; 2009). Often these aspects of legal practice are viewed as separate from or an adjunct to the process of litigation, but the practical reality is that they are fundamental to it. Galanter (1984: 268) calls this 'litigotiation'. Moreover, following the Woolf reforms, there are considerable pressures on the parties to settle. Galanter (1984: 272-3) explicitly recognises the significance of relationships between lawyers in 'litigotiation'. He refers to the 'bargaining arenas' that can develop in respect of legal specialisms in specific localities around a 'constellation of lawyers...who interact with one another...'. This knowledge of their opponents and the legal context in which they operate enables advisers to negotiate more effectively.

Face-to-face advisers believed that the working relationships they had developed with their opponents assisted them with reaching agreements that were beneficial to their clients. A face-to-face adviser who had been working in the same locality for a long period stated: 'I know the rent arrears team, the court team, because I used to do a duty scheme for years...it's a bit of gold dust really' (FA2). Agreements made with the other side could make a real difference to the outcome of a case. Examples included agreeing a fixed-term adjournment in unpromising circumstances or swiftly resolving a homelessness emergency without having to resort to court proceedings. A telephone adviser described having similar experiences when she had been a face-to-face adviser and explained that this was a facility she now lacked as a telephone adviser: '...I just find it a lot more difficult to negotiate with landlords' (TA4). In addition, an experienced face-to-face lawyer explained how understanding the staffing arrangements at a specific local authority could give advisers a tactical advantage when dealing with ongoing proceedings and making settlement proposals. Evidently, relationships with the staff of opposing organisations and familiarity with their operating environment can have a positive effect on case outcomes.

It should be recognised that there is a potential danger that, by forming these relationships, lawyers and advisers will lose their independence and refrain from taking action that would be in their clients' best interests. In the past 'co-optation' of this nature has been identified as a feature of the criminal justice system and a potential risk in personal injury litigation (Genn, 1987: 49). Family solicitors have, however, been found to be able to manage amicable negotiations without compromising their clients' best interests (Eekelaar, Maclean & Beinart, 2000). Moreover, a strong

professional code of conduct, a rigorous ethos and a clear sense of purpose can provide safeguards against such compromises (Smith, 1992). This has been shown in relation to Law Centres, which have routinely taken action against local authorities despite the potential risk to their grant funding.⁹ In past research it was suggested that personal injury lawyers who favoured a co-operative approach may have done so because their more limited knowledge of the field led to a lack of confidence in taking proceedings (Genn, 1987). Possibly, then, the best protection against co-optation is to be a specialist and to be committed to taking proceedings where necessary (and to ensure that your opponent knows it). This proposition was confirmed by a face-to-face lawyer who explained that he was able to manage an informal approach with the other side at the same time as being clear about his willingness to take a robust position where necessary:

‘...I know whom to threaten with an out of hours application to the duty Judge in the High Court ...I know exactly who to send [a letter before claim] to and just do the threat at the bottom...and you’re not lying and they know you’re not lying and it’s all sorted.’ (FL3)

The above indicates that expert advisers are able to use their relationships with the staff of opposing organisations to work more effectively on behalf of their clients.

Several telephone advisers recognised that relationships with opponents could be an advantage of face-to-face advice. Notably, however, they mainly saw the advantages only in terms of the earlier, information-gathering stage of the case. The potential impact on later case outcomes was largely unacknowledged. Further, it was suggested by some telephone advisers that local knowledge made little difference to cases in legal terms. Telephone advisers were less likely to refer to the importance of settlement and negotiation in advice. These differences in attitude suggest the development of divergent perceptions of the nature of advice between telephone and face-to-face advisers, an issue which is explored later in this article.

The court

It is in court that local knowledge in all its forms combines powerfully with physical presence to provide advocacy that helps clients to keep their homes. The ability to provide court advocacy is an area where face-to-face services truly distinguish themselves from the telephone-only casework of CLA telephone advisers.¹⁰ Telephone advisers identified the inability to offer representation as a potential disadvantage of the service they offered.¹¹ It was mentioned as the most common reason for clients to request face-to-face advice. Face-to-face advisers spoke of the difference their presence in court could make to unrepresented individuals. An experienced adviser stated:

‘I did the duty scheme for years, so even ten minutes with the client beforehand and then walking into court made a difference...They [the landlord] were going to request an outright

⁹ ‘On more than one occasion, a law centre which has taken action against the local council has found its grant from the council suddenly at risk’ (Harlow & Rawlings, 1992: 119).

¹⁰ Under existing funding arrangements, CLA telephone advisers cannot provide clients with court representation. They can make written representations on the client’s behalf.

¹¹ A randomised trial in the US comparing outcomes in summary eviction matters found that clients who were given both self-help ‘how-to’ sessions and traditional attorney-client representation had significantly better outcomes than those clients who only received the ‘how-to’ sessions (Greiner, Pattanayak & Hennessy, 2013).

order... They'd have got it if the client hadn't turned up, they'd have got it if the client had gone in on their own.' (FA2)

The court also plays a significant part in the development of a 'local legal culture'. A 'local legal culture' consists of 'common practitioner norms governing case handling and participant behaviour in court' or 'a perception of "how we do things here"' (Kritzer and Zemans, 1993: 538-40, citing Church et al., 1978: 54 and Church, 1985: 449). It develops between the 'repeat players' in legal proceedings (Galanter, 1974: 97). A network of social relations exists in terms of the relationships between the legal representatives of landlords and tenants and the judge. Face-to-face advisers described a disparity in approaches to possession matters and rent arrears between courts in different areas. In these types of cases, the 'local legal culture' is likely to be influenced by the policies and practices of landlords and local authorities within the area. A face-to-face adviser will be able to tailor their negotiations according to their knowledge of the local court's approach to these matters.

Telephone advisers were aware that they were missing out on this type of knowledge. They recognised that face-to-face advisers had information about the attitude of the judge as a result of attending court. Without on the ground contacts, the 'local legal culture' is largely inaccessible to remote telephone advisers, as it comes from the experience of working regularly in specific courts. In this respect, telephone advisers are akin to inexperienced 'one-shotters' (Galanter, 1974: 97), because they have to deal with court proceedings in multiple unfamiliar courts.

The focus of telephone advisers regarding court proceedings was on the adviser's ability to influence the judge and the formal hearing. Familiarity with the judge as a result of representing clients in court was also seen by several face-to-face advisers to have a beneficial effect on judicial decision-making. One explained: 'I used to win benefit appeals that I didn't think were winnable just because you developed a relationship with the judges and everything like that. I think it made a huge difference' (FA2).

Nevertheless, familiarity with the judge was a factor that face-to-face advisers were less likely to put forward as an advantage of local knowledge. They were much more likely to refer to their interaction with opponents as having the greatest influence on proceedings. A face-to-face adviser who regularly attended the duty scheme at her local court explained: 'There is a lot of respect...between us...No matter how bad the arrears are, if I say "[We] are willing to take on this case and help this client", they back off' (FA5).

The impact of face-to-face negotiations with opponents was also appreciated by a telephone adviser who had 'shadowed' a duty scheme. He stated:

'I did one of the duty schemes at [local] County Court, and... [laughing] you just walk in and speak to the housing officer, and the matter's resolved in about two minutes... [H]aving that local knowledge just gives you that edge, I think...' (TA8)

Thus these interpersonal relationships assisted face-to-face advisers in reaching agreements that prevented clients from losing their homes, sometimes at the last possible moment of legal intervention.

The tendency among face-to-face advisers was to explain the benefits of court representation in terms of negotiation with opponents and relational aspects of the court process. This can be contrasted with the telephone advisers' greater focus on the judge and the formal hearing. As already seen in relation to advising more generally, there is a possible dissimilarity arising between telephone and face-to-face advisers in terms of the emphasis they place on different aspects of the advice process and the importance of relational factors.

Divergent understandings of the nature of advice

Overall, a pattern appears to be emerging which reveals a division between telephone and face-to-face advisers with regard to their understanding of effective advice. With regard to access, the focus of telephone advisers was on 'logistical' accessibility. They also recognised that local knowledge could have a role in the provision of advice, but were more likely to see it in terms of obtaining information or providing the client with non-legal assistance. When they recognised the value of local knowledge on the legal outcome of the case, they tended to emphasise the more formal elements of the process, such as the attitude of the judge, rather than matters of negotiation and agreement. If, however, telephone advisers had been exposed to the face-to-face environment – due, for example, to prior experience or by shadowing a colleague at court – they were more able to identify the relational advantages of local knowledge with regard to legal casework. Face-to-face advisers were often more alert to the circumstances when local knowledge may be used to influence proceedings for the client's benefit.

The location of delivery appears to be influencing advisers' perception of the nature of legal practice. The attitude expressed by telephone advisers hints that, as a result of providing advice from a location that is physically distant from their clients, they may be starting to develop a narrower understanding of the constituent elements of effective advice. Unless they have experienced face-to-face interaction, there are indications that they are less likely to be aware of the importance of relationships throughout the legal process. This echoes other findings of this research, set out in detail elsewhere, whereby telephone advisers are less likely to identify the importance that clients place on adviser commitment (Burton, 2015; 2018). Similarly, with regard to the use of interpreters, telephone advisers seem to be largely unaware that telephone clients may feel detached from the adviser when they do not have any direct verbal contact with the adviser (Burton, 2015). Thus it can be argued that the constraints of telephone-only provision may be fostering a form of practice among telephone advisers which is less able to appreciate the importance of relational knowledge in effective lawyering. This resonates with the premise found in the work of Massey (1994), Massey and McDowell (1994), Blomley (2003) and Delaney (1993) that geography shapes human behaviour and hence social, political and legal relationships. The possible implication here is that the changes to the site of delivery are capable of altering the nature of legal practice itself.

Parallels can be found between this emergent, more limited, conception of advice and the quality standards introduced by the Legal Aid Board (LAB) in the 1990s. As expert peer review was not considered economically feasible for the purpose of assessing quality, a file assessment system was

devised that could be used "by an intelligent person with undergraduate legal education (or equivalent)" (Sherr, Moorhead & Paterson, 1994: 144, citing LAB, 1992: para 37). Of necessity, as the scheme's authors explained, this led to a system that was focused on assessing observable process rather than professional judgement. The Transaction Criteria were in a checklist format with a series of questions that could be answered 'yes', 'no', or 'not applicable'. Sanderson and Sommerlad (2002) refer to the complex interlocking different forms of knowledge that an expert adviser needs in addition to process, or procedural knowledge. They point out that the Transaction Criteria captured only procedural knowledge and missed out on several essential forms of professional legal knowledge, including tacit, local, relational and cultural knowledge. A similar approach to advice can be detected in 'decomposition': the theory that 'any legal job or category of legal work can be decomposed, that is, broken down into constituent tasks, processes, and activities' and then reproduced in digital form (Susskind, 2008: 43). Thus, advice is decontextualised and expert knowledge is reduced to the component parts of technical knowledge of the law and legal process.¹² Yet the evidence of advisers in this research is that as a result of local knowledge and working relationships, there is scope to achieve better outcomes for clients. It is argued that a legal system that devalues tacit, relational, cultural and local professional knowledge reduces the possibility for responsiveness to individual circumstances and increases the likelihood of injustice. It is a system that we may be in danger of creating as we move increasingly to remoteness and automation in the delivery of advice.

Conclusion

Technological advances coupled with significant reductions in public funding have stimulated the concerted drive towards telephone-only advice in social welfare legal aid provision. Due to the longstanding connection between locally-based delivery and social welfare legal aid, this raises questions about how these changes will affect the practice of social welfare law. While numbers remain relatively low, telephone-only services appear able to substantiate their claim to more instant availability. However, a lack of publicity and low public awareness mean that claims to increase access to legal aid services through telephone provision are for now rendered largely meaningless. At the same time, face-to-face local agencies struggle to meet demand and, apart from in the most urgent cases, to provide an immediate response. There are nonetheless benefits of local provision that telephone services find difficult to replicate. Firstly, physical presence within a community and local referral networks may facilitate greater access to advice for more marginalised groups and vulnerable clients. Secondly, physical and geographical knowledge of an area can enhance the adviser's understanding of a case. Thirdly, a social understanding of place illuminates how local services are able to forge relationships with their adversaries and allies for the benefit of their clients. In addition, court representation is a particularly potent aspect of local face-to-face services, where advisers' local knowledge and working relationships come to the fore in helping clients to save their homes. Currently, there are considerable advantages to housing advice with a local connection, which telephone-only services are rarely in a position to provide.

Further, this research suggests that a possible consequence of moving the site of delivery from the local to the remote may be a reconfiguration of advisers' conceptualisation of advice. Telephone

¹² In more recent work, Susskind and Susskind (2015) recognise the need for tacit knowledge but are less clear about how it will be reproduced electronically.

advisers may be becoming less alert to the informal relational aspects of legal casework. An impact of telephone delivery may be to distance the adviser from the tacit forms of knowledge that are integral to casework. As legal service delivery moves increasingly towards remote forms, this raises a potential development of significant concern. It will require careful monitoring. The place of delivery has been critical to the development of social welfare legal aid in the past. We are faced with the prospect that, in the future, the remote site of delivery will shape the nature of legal advice in ways we have yet to fully understand and would be wise not to ignore.

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